IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 849 of 2007.

Reserved on: 05.10.2007.

Decided on: 12.10.2007.

Smt. Darshna Devi. … … Petitioner.

Versus

Union of India & Another. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner: **Ms. Salochna Kaundal, Advocate.**

For the Respondents: **Mr. Ravinder Thakur, Central Government Counsel.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the petitioner's late husband Shri Bidhi Singh was enrolled in the Regiment of Artillery on 7th June, 1960. He was transferred to Pension Establishment with effect from 31.8.1975. He was granted service pension at the rate of Rs.76/- per month with effect from 1.9.1975. He got himself re-enrolled in Defence Security Corps (in short DSC) on 30.12.1983. He was admitted to 148 Base Hospital on 11.3.1986 and was discharged on 26.4.1986. He was again admitted to 148 Base Hospital on 26.5.1986 and was discharged from there on 13.6.1986.

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[1] Whether reporters of local papers may be allowed to see the judgment? Yes.

He was diagnosed as a case of CSMC (OPTD) and was placed in low medical category BEE (Permanent) with effect from 11.6.1986 and was subsequently placed in CEE (Permanent) with effect from 6.7.1990. He died on 3.1.1992. As per the report dated 3.1.1992 issued by the Doctor of B.J. Medical College and Sassoon General Hospitals, Pune the death was due to ISCHAEMIC HEART DISEASE. As per the certificate of attributability issued by the Military Hospital, Kirkee on 30.1.1992 the cause of death ISCHAEMIC HEART DISEASE was aggravated by Military Service due to the stress and strain of service. The special family pension claim in respect of the petitioner was initiated by the DSC Record Office and was submitted to the Chief Controller now (Principal Controller) of Defence Accounts (Pensions), Allahabad vide letter dated 20.4.1992. The claim of the petitioner for special family pension was rejected by the PCDA (Pensions) Allahabad on 4.8.1992. The appeal preferred by the petitioner was rejected by the Ministry of Defence on 7.7.1993. The petitioner served a legal notice on 24.5.1999 pursuant to which she was informed that she is not entitled for special family pension.

Ms. Salochna Kaundal had strenuously argued that the petitioner is entitled to get special family pension as per Regulation 213 of the Army Pension Rules, 1961. She had forcibly contended that as per Annexure R-2, the cause of death of Shri Bidhi Singh was aggravated by military service due to stress and strain of service. She had also drawn the attention of the Court to the proceedings of the Court of Inquiry which was conducted on 29th January, 1992 for investigating into the circumstances, under which Shri Bidhi Singh died on 3rd January, 1992. Mr. Ravinder Thakur had supported the order dated 4.8.1992 and 7.7.1993 and had contended that the petitioner was not entitled to special family pension as she had already been

paid family pension with effect from 4.1.1992 onwards. He also contended that the petitioner is not entitled to second service pension since her husband had not completed 15 years service in DSC.

I have heard the learned counsel for the parties and perused the record carefully.

The position which emerges from the aforesaid facts is that the petitioner's husband was enrolled in the Army with effect from 7.6.1960 to 31.8.1975 and thereafter he got himself enrolled in Defence Security Corps on 30th December, 1983 and died on 3.1.1992. It will be apt to reproduce Rule 213 of Pension Regulations of Army Part-I (1961) which reads thus:-

> **"213. A special family pension may be granted to the family of an individual if his death was due to or hastened by:-**
>
> **(a) a wound, injury or disease which was attributable to Military Service.**
>
> **OR**
>
> **(b) the aggravation by Military service of wound, injury or disease which existed before or arose during Military Service."**

Now the case of the petitioner for special family pension is to be viewed in view of Rule 213. The case of the petitioner was forwarded by the DSC Record Office for special family pension on 20.4.1992**.** The same was rejected by the PCDA (Pensions), Allahabad on 4.8.1992. Primarily the case of the petitioner was rejected on the ground that the disease of Shri Bidhi Singh was neither attributable to nor aggravated by his military service. The appeal preferred by the petitioner was rejected on 7.7.1993. It is mentioned in the communication dated 7.7.1993 that there was no proof which could show that the death of Shri Bidhi Singh was caused due to pressure or

any tension by military service and, as such, he did not die because of military service. The same position was reiterated while informing the petitioner by way of reply to the legal notice served by here. It is evident from the certificate of attributability issued by Military Hospital, Kirkee on 30.1.1992 that the cause of death of Shri Bidhi Singh was due to stress and strain of service. This fact was also concurred by the Higher Medical Authorities at Head Quarter, Maharashtra and Gujarat Area, Bombay and at Head Quarter Southern Command, Pune. The same position has been reiterated in the proceedings of Court Inquiry, dated 29th January, 1992 whereby the following opinion has been given:-

"The Court is of the opinion that:-

(a) 1162015-W Sepoy BIDHI SINGH of 134 DSC Platoon att to HE Factory, Kirkee was on a proper bonafide Govt Duty.

(b) Sepoy BIDHI SINGH died while in service due to 'ISCHAMIC HEART DISEASE' at 0710 hrs on 03 Jan 92.

(c) Sepoy BIDHI SINGH was found to be in normal health and cheerful mood prior to his death.

(d) There is no faul play in death of Sepoy BIDHI SINGH and he appears to have died a natural death due to sudden heart failure (ISCHAMIC HEART DISEASE).

(e) The death of 1162015-W Sepoy BIDHI SINGH is attributable to Military Service."

Thus, it is clear that the disease of the petitioner as per Annexures R-2 and R-9 was attributable to military service.

The matter is required to be considered from another angle. The certificate of attributability Annexure R-2 has been issued by the

Military Hospital, Kirkee which was concurred by the Higher Medical Authorities at Head Quarter, Maharashtra and Gujarat Area, Bombay and at Head Quarter Southern Command, Pune. The PCDA (Pensions), Allahabad could not sit in judgment over the medical opinion, i.e. Annexure R-2 as well as the findings rerecorded by the Court of Inquiry, dated 29th January, 1992.

The Delhi High Court in **Ex. LNK Gordhan and etc. v. Union of India and others, 2002 LAB. I.C. 1941** has held that Chief Controller of Defence Accounts (Pensions) could not reduce the disability pension once the opinion has been given by Resurvey Medical Board that disability had remained unchanged. His Lordship has further held as under:

> **"Different Division Benches of Punjab and Haryana High Court have held that the disability indicated by the concerned Medical Board must be accepted by the C.C.D.A.(Pension). This has been so held in Ashwani Kumar (Ex-Havildar) v. Union of India, 1997 (1)Serv. LR 86. The same views have been expressed in Ujagar Singh v. Union of India, 1997 (4) RSJ 587. A Division Bench of this court has also considered the very same question in Raghubir Singh v. Union of India, (1998) 73 Delhi LT 567. My learned Brothers had also relied on the decision of the Hon'ble Supreme Court in Mohinder Singh v. Union of India (Civil Appeal No.164 of 1993 decided on 14.1.1993) and held that the C.C.D.A. (P) had no power to over ride the opinion of the Medica Board which had discharged the petitioner from service with 30% disability. The writ petition was allowed with costs of Rs.2000/-."**

It may be recalled that a single Jude of this court has already allowed the earlier petition of Shri Ram Kanwar. Single Benches of Punjab and Haryana High Court have held in **Darrshan Singh v. Union of India, 2001 (2) SCT 813; Baldev Singh v. Union of India**

2001 (2) SCT 807; Ex. Sepoy Hari Chand v. Union of India, 2001 (2) SCT 524; Ajmer Singh (Ex.Sigmn) v. Union of India, 2001 (1) serv. LR 461; Surmukh Singh v.Union of India, 1994 (4) SCT 31 and Ex. Subedar Clerk Nirmal Singh v. Union of India, 1999 (4) SCT 810 that it was not open to the C.C.D.A.(Pension) or the Appellate Authority to record an opinion contrary to the Resurvey Medical Board, or the Medical Board concerned without re-examination.

Apart from Division Benches of different High Courts, and various pronouncements of Single Judges of different High Courts, the Hon'ble Supreme Court has now given a final and definitive judgment on the question of **Ex. Sapper Mohidner Singh v. Union of India (Civil Appeal No.164 of 1993 decided on 14.1.1993),** wherein it has observed as follows:

> **"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of defence Accounts (pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line and comment upon the extent of disability without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."**
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> **From the above analysis it is at once evident that the matter is no longer res integra. It cannot, therefore, be**

appreciated that the C.C.D.A. (Pension) continues to implement its own view, which is contrary to these judgments. The effect of this obduracy on the part of the C.C.D.A. (Pension) is that there is proliferation in litigation which is wholly avoidable tests the resources of ex servicemen and wastes the time of the Courts. It exposes a lack of compassion and concern for human plight especially of persons who have suffered these disabilities while in the service of the armed Forces. An attitude such as has been exemplified by the C.C.D.A. (Pension) is deleterious and demoralizing for persons who have served in the Armed Forces, fully aware of the dangers that are endemic in the performance of their duties. Rather than extending care, there appears to be a concerned effort towards harassment. That too when the amounts in question are not insignificant. "

The Jammu and Kashmir High Court in **Kartaro Devi vs. Union of India**, **2002 LAB. I.C. 2743** has held that the Controller of Defence Accounts cannot sit over the opinion expressed by the Medical Board. His Lordship has held as under:

"The position of law in this regard is well settled that in case an opinion is expressed by the Medical Board, then the Controller of Defence Accounts is not supposed to sit over the judgment and if any decision is to be taken, then that has to be taken after consulting a Medical Board and compliance of natural justice. In Janak Raj v. Union of India (2002) 2 SCT 456 (Punj & Hry), the disability of the aggrieved army personnel was determined by the Medical Board at 40% but the Controller of Defence Accounts rejected the claim. It was observed that the Controller of Defence Accounts can not sit over the findings of the Medical Board as he is not an expert in this regard."

In **Dwarka Nath vs. Union of India, 2003 LAB. I.C. 1005** the Hon'ble Judge of Jammu and Kashmir High Court held that the

pension sanctioning authority could not reject the claim for the pension once disability has been assessed by the Medical Board. His Lordship has held as under:

> **"In the present case, the disability of the petitioner was assessed at 30 percent. His case was sent to the office of Chief Controller of Defence Accounts, Pension, Allahabad. It is this office which has rejected the claims of the petitioner. Therefore, in view of the legal position noticed above, the action of aforesaid office of the Union of India in rejecting the claims of the petitioner for grant of disability pension cannot be sustained. The petitioner is held entitled to disability pension at the percentage which has been assessed by the Medical Board. Let this be calculated and paid to the petitioner. Petitioner shall also be entitled to interest at the rate of 6 percent on the arrears. In case, the disability pension alongwith the arrears is not released within a period of three months from the date, a copy of this order is made available by the petitioner to the respondents, then, the rate of interest, to which the petitioner would become entitled to would be 12 percent and this enhanced component would be payable by the person on whose account the delay occurs.**
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> **Disposed of as such."**

Similarly, the Delhi High Court in **Ex. Hav. Jai Narayan v. Union of India and others**, **2003 LAB. I.C. 3653** held that the reduction of disability by PCDA from 20% to 11 to 14% without subjecting petitioner to a fresh Review Medical Board was impermissible. Their Lordships have held as under:

> **"We have gone through those judgments and under these PCDA (P) Allahabad could not reduce or alter the disability percentage determined by the Re-survey Medical Board, unless the petitioner was subjected to a Fresh Review Medical Board on the basis of any superior medical opinion, which is not the case here."**

As per the law discussed in the judgments cited above and in view of the Annexures R-2 and R-9, the decision by the PCDA (Pensions), Allahabad, dated 4.8.1992 and decision dated 7.7.1993 cannot be sustained.

Now so far as the petitioner's claim for second service pension is concerned, the same is not maintainable since Shri Bidhi Singh had not completed 15 years of service in DSC. The petitioner is already getting ordinary family pension with effect from 4.1.1992.

Accordingly, this writ petition is allowed. The letters dated 4.8.1992 and 7.7.1993 are quashed and set aside. The respondents are directed to release the special family pension in favour of the petitioner with effect from 4.1.1992 onwards with interest at the rate of 9% per annum within a period of six weeks from today. No order as to costs.

(Rajiv Sharma), Judge

October 12, 2007.
(sck). ``